



DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 191

[Docket No. PHMSA-2011-0023; Amdt. No. 191-32]

RIN 2137-AF38

Pipeline Safety: Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments: Technical Corrections.

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule; technical corrections.

SUMMARY: PHMSA is issuing corrections of certain changes to incident and annual reporting requirements for offshore gathering pipelines in its November 15, 2021, final rule titled “Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and Other Related Amendments.”

DATES: These corrections are [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: *Technical questions:* Steve Nanney, Senior Technical Advisor, by telephone at 713-272-2855.

General information: Sayler Palabrica, Transportation Specialist, by telephone at 202-366-0559.

SUPPLEMENTARY INFORMATION:

I. Corrections

On November 15, 2021, PHMSA published a final rule titled “Safety of Gas Gathering Pipelines: Extension of Reporting Requirements, Regulation of Large, High-Pressure Lines, and

Other Related Amendments”¹ (Final Rule) amending the Federal pipeline safety regulations (49 CFR parts 190-199) to introduce, among other things, incident and annual reporting requirements for previously unregulated Types C and R onshore gas gathering pipelines. The preamble to the Final Rule explicitly disclaimed amendment of then-existing part 191 reporting and part 192 safety requirements pertaining to offshore gas gathering pipelines.² The Final Rule became effective on May 16, 2022.

But, in amending then-existing regulatory language pertaining to incident (§ 191.15) and annual (§ 191.17) reporting requirements to provide that regulated *onshore* gas gathering pipelines must submit annual and incident reports, PHMSA inadvertently omitted language requiring *offshore* gas gathering pipelines to continue to submit the same consistent with longstanding requirements. PHMSA is now issuing corrections amending §§ 191.15(a)(1) and 191.17(a)(1) consistent with statements in the preamble to the Final Rule. PHMSA has reviewed the current versions of each of DOT Forms PHMSA F 7100.2 (incident reporting), and PHMSA F 7100.2-1 (annual reporting), and their respective instructions, and confirmed that each form continues to reference offshore gathering lines and therefore no conforming revisions to those forms will be necessary following codification of the corrections in this notice.³

II. Regulatory Analyses and Notices

A. Statutory/Legal Authority

Statutory authority for this notice’s corrections to the Final Rule, as with the Final Rule itself (whose discussion of statutory authority at Section IV.A., 86 FR at 63290, is adopted herein by reference), is provided by the Federal Pipeline Safety Act (49 U.S.C. 60101 et seq.). The Secretary delegated his authority under the Federal Pipeline Safety Act to the PHMSA Administrator under 49 CFR 1.97.

¹ 86 FR 63266 (“Final Rule”). PHMSA subsequently published technical corrections of certain regulatory amendments in the Final Rule (specifically, §§ 191.23 and 192.8) not relevant here. 87 FR 26296 (May 4, 2022).

² See, e.g., 86 FR at 63266 (“The rule does not affect offshore gas gathering pipelines.”) and 63268 (“The final rule addresses reporting and safety requirements for onshore gas gathering lines; *offshore gas gathering lines are beyond the scope of this rulemaking.*”) (emphasis added).

³ The referenced forms are available on PHMSA’s website at <https://www.phmsa.dot.gov/forms/operator-reports-submitted-phmsa-forms-and-instructions>.

PHMSA finds it has good cause to make these corrections without notice and comment pursuant to Section 553(b) of the Administrative Procedure Act (APA, 5 U.S.C. 551 et seq.). Section 553(b)(B) of the APA provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. As explained above, the textual alterations herein consist of corrections re-codifying regulatory language inadvertently deleted by the Final Rule, consistent with statements in the preamble to the Final Rule; they make no substantive changes to the Final Rule but merely facilitate its implementation by aligning the regulatory text and explanatory material in the Final Rule's preamble. Because the Final Rule is the product of an extensive administrative record with numerous opportunities (including through written comments and the advisory committee) for public comment, PHMSA finds that additional comment on the corrections herein is unnecessary.

The immediate effective date of the corrections contained in this notice is authorized under Section 553(d)(3) of the APA. Section 553(d)(3) provides that a rule should take effect "not less than 30 days" after publication in the Federal Register except for when good cause is found by the agency and published within the rule, thus allowing for earlier effectiveness.

5 U.S.C. 553(d)(3). "[T]he purpose of the thirty-day waiting period is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect." Omnipoint Corp. v. F.C.C., 78 F.3d 620, 630 (D.C. Cir. 1996). The corrections at §§ 191.15(a)(1) and 191.17(a)(1) restore annual and incident reporting requirements for offshore gas gathering pipelines consistent with explicit statements in the Final Rule preamble. Moreover, PHMSA finds that good cause under Section 553(d)(3) supports making the revisions effective upon publication in the Federal Register because the corrections contained in this notice are entirely consistent with the Final Rule and ensure timely submission of incident and annual reports by offshore gas gathering pipeline operators.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has been evaluated in accordance with existing policies and procedures and is considered not significant under Executive Order 12866 ("Regulatory Planning and Review") and

DOT Order 2100.6A (“Rulemaking and Guidance Procedures”); therefore, this notice has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. PHMSA finds that the corrections herein (in all respects consistent with the Final Rule) impose no incremental compliance costs nor adversely affect safety, as they merely re-codify certain reporting requirements inadvertently deleted by the Final Rule and thereby ensure timely submission of incident and annual reports by offshore gas gathering pipeline operators.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Flexibility Fairness Act of 1996 (5 U.S.C. 601 et seq.), generally requires Federal regulatory agencies to prepare a Final Regulatory Flexibility Analysis (FRFA) for a final rule subject to notice-and-comment rulemaking under the APA. 5 U.S.C. 604(a).⁴ The Small Business Administration’s implementing guidance explains that “[i]f an NPRM is not required, the RFA does not apply.”⁵ Because PHMSA has “good cause” under the APA to forego comment on the corrections herein, no FRFA is required. Moreover, PHMSA prepared a FRFA for the Final Rule, which is available in the docket for this rulemaking;⁶ because the corrections herein will impose no new incremental compliance costs, PHMSA understands the analysis in that FRFA remains unchanged.

D. Paperwork Reduction Act

The corrections in this notice impose no new or revised information collection requirements beyond those discussed in the Final Rule. As explained above, the preamble to the Final Rule explicitly disclaimed amendment of part 191 reporting requirements for offshore gas gathering pipelines; the corrections herein are consistent with those statements and will require no change to current DOT Form PHMSA F 7100.2 (incident reporting), DOT Form PHMSA F 7100.2-1 (annual reporting), and their respective instructions.

⁴ This requirement is subject to exceptions—which are not in any event applicable here because PHMSA has good cause to forego comment in adopting the corrections herein.

⁵ Small Business Administration, “A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act” 55 (2017).

⁶ Doc. No. PHMSA-2011-0023-0488, at 34-35.

E. Unfunded Mandates Reform Act of 1995

PHMSA analyzed the corrections in this notice under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA, 2 U.S.C. 1501 et seq.) and determined that the corrections to the Final Rule herein do not impose enforceable duties on state, local, or Tribal governments or on the private sector of \$100 million or more, adjusted for inflation, in any one year. PHMSA prepared an analysis of the UMRA considerations in the final Regulatory Impact Analysis for the Final Rule, which is available in the docket for the rulemaking.⁷ Because the corrections herein will impose no new incremental compliance costs, PHMSA understands the analysis in that UMRA discussion for the Final Rule remains unchanged.

F. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 et seq.) requires Federal agencies to prepare a detailed statement on major Federal actions significantly affecting the quality of the human environment. PHMSA analyzed the Final Rule in accordance with NEPA, implementing Council on Environmental Quality regulations (40 CFR parts 1500–1508), and DOT implementing policies (DOT Order 5610.1C, “Procedures for Considering Environmental Impacts”) and determined the Final Rule would not significantly affect the quality of the human environment.⁸ The corrections to the Final Rule in this notice have no effect on PHMSA’s earlier NEPA analysis as they are consistent, and merely facilitate compliance, with the Final Rule.

G. Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provided, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

⁷ Doc. No. PHMSA-2011-0023-0488, at 35.

⁸ Final Environmental Assessment, Doc. No. PHMSA-2011-0023-0485.

H. Executive Order 13132 (Federalism)

PHMSA has analyzed this notice in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”).⁹ The corrections herein are consistent, and merely facilitate timely compliance with, the Final Rule, and do not have any substantial direct effect on the states, the relationship between the National Government and the states, or the distribution of power and responsibilities among the various levels of government beyond what was accounted for in the Final Rule. This notice does not contain any provision that imposes any substantial direct compliance costs on state and local governments, nor any new provision that preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.¹⁰

I. Executive Order 13211

PHMSA analyzed the Final Rule and determined that the requirements of Executive Order 13211 (“Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use”)¹¹ did not apply. The corrections to the Final Rule herein are not a “significant energy action” under Executive Order 13211 either as they are not likely to have a significant adverse effect on supply, distribution, or energy use. Further, OMB has not designated the corrections herein as a significant energy action.

J. Executive Order 13175

This document was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”)¹² and DOT Order 5301.1 (“Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes”). Because none of the corrections herein have Tribal implications or impose substantial direct compliance costs on Indian Tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

⁹ 64 FR 43255 (Aug. 10, 1999).

¹⁰ Moreover, PHMSA determined that the Final Rule did not impose substantial direct compliance costs on State and local governments.

¹¹ 66 FR 28355 (May 22, 2001).

¹² 65 FR 67249 (Nov. 6, 2000).

K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 (“Promoting International Regulatory Cooperation”),¹³ agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The corrections to the Final Rule in this notice do not impact international trade.

L. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 191

MAOP exceedance, Pipeline reporting requirements.

In consideration of the foregoing, PHMSA amends 49 CFR part 191 as follows:

**PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE;
ANNUAL, INCIDENT, AND OTHER REPORTING**

1. The authority citation for part 191 continues to read as follows:

Authority: 30 U.S.C. 185(w)(3), 49 U.S.C. 5121, 60101 et seq., and 49 CFR 1.97.

2. In § 191.15, revise paragraph (a)(1) to read as follows:

§ 191.15 Transmission systems; gathering systems; liquefied natural gas facilities; and underground natural gas storage facilities: Incident report.

(a) * * *

¹³ 77 FR 26413 (May 4, 2012).

(1) *Transmission, offshore gathering, or regulated onshore gathering.* Each operator of a transmission, offshore gathering, or a regulated onshore gathering pipeline system must submit Department of Transportation (DOT) Form PHMSA F 7100.2 as soon as practicable but not more than 30 days after detection of an incident required to be reported under § 191.5.

* * * *

3. In § 191.17, revise paragraph (a)(1) to read as follows:

§ 191.17 Transmission systems; gathering systems; liquefied natural gas facilities; and underground natural gas storage facilities: Annual report.

(a) * * *

(1) *Transmission, offshore gathering, or regulated onshore gathering.* Each operator of a transmission, offshore gathering, or regulated onshore gathering pipeline system must submit an annual report for that system on DOT Form PHMSA F 7100.2-1. This report must be submitted each year, not later than March 15, for the preceding calendar year.

* * * *

Issued in Washington, DC on June 8, 2022, under authority delegated in 49 CFR 1.97.

Tristan H. Brown,
Deputy Administrator.

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